



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-846]

Sugar from Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable January 15, 2020.

SUMMARY: The Department of Commerce (Commerce) and a representative of the Government of Mexico (GOM) have signed an amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (CVD Agreement). The amendment to the CVD Agreement modifies the definitions for sugar from Mexico, modifies the restrictions of the volume of direct or indirect exports to the United States of sugar from all Mexican producers/exporters, and provides for enhanced monitoring and enforcement mechanisms.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell at (202) 482-0162 or (202) 482-0408, respectively; Bilateral Agreements Unit, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTAL INFORMATION:

Background

On April 17, 2014, Commerce initiated a countervailing duty investigation under section 702 of the Tariff Act of 1930, as amended (the Act), to determine whether manufacturers,

producers, or exporters of sugar from Mexico receive subsidies.¹ On August 25, 2014, Commerce preliminarily determined that countervailable subsidies are being provided to producers and exporters of sugar from Mexico and aligned the final countervailing duty determination with the final antidumping duty determination.²

Commerce and the GOM signed the CVD Agreement on December 19, 2014.³

On January 8, 2015, Imperial Sugar Company (Imperial) and AmCane Sugar LLC (AmCane) each notified Commerce that they had petitioned the International Trade Commission (ITC) to conduct a review of the CVD Agreement under section 704(h) of the Act to determine whether the injurious effects of the imports of the subject merchandise are eliminated completely by the CVD Agreement. On March 24, 2015, in a unanimous vote, the ITC found that the CVD Agreement eliminated completely the injurious effects of imports of sugar from Mexico.⁴ As a result of the ITC's determination, the CVD Agreement remained in effect, and on March 27, 2015, Commerce, in accordance with section 704(h)(3) of the Act, instructed U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of all entries of sugar from Mexico and refund all cash deposits.

Notwithstanding issuance of the CVD Agreement, pursuant to requests by domestic interested parties, Commerce continued its investigation and made an affirmative final determination that countervailable subsidies were being provided to exporters and producers of sugar from Mexico.⁵ In its *Final Determination*, Commerce calculated countervailable subsidy

¹ See *Sugar from Mexico: Initiation of Countervailing Duty Investigation*, 79 FR 22790 (April 24, 2014).

² See *Sugar from Mexico: Preliminary Affirmative Countervailing Determination and Alignment of Final Countervailing Determination with Final Antidumping Duty Determination*, 79 FR 51956 (September 2, 2014).

³ See *Sugar From Mexico: Suspension of Countervailing Investigation*, 79 FR 78044 (December 29, 2014) (CVD Agreement).

⁴ See *Sugar from Mexico; Determinations*, 80 FR 16426 (March 27, 2015).

⁵ See *Sugar From Mexico: Continuation of Antidumping and Countervailing Duty Investigations*, 80 FR 25278 (May 4, 2015); *Sugar From Mexico: Final Affirmative Countervailing Duty Determination*, 80 FR 57337

rates of 43.93 percent for Fondo de Empresas Expropiadas del Sector Azucarero (FEESA), 5.78 percent for Ingenio Tala S.A. de C.V. and certain affiliated sugar mills of Grupo Azucarero Mexico S.A. de C.V. (collectively, the GAM Group), and 38.11 percent for producers and exporters that were not individually investigated. Commerce stated in its *Final Determination* that it would “not instruct CBP to suspend liquidation or collect cash deposits calculated herein unless the {CVD} Suspension Agreement is terminated.”⁶ The ITC subsequently made an affirmative determination of material injury to an industry in the United States by reason of imports of sugar from Mexico.⁷

In June 2016, Commerce and GOM began consultations regarding the CVD Agreement to address concerns raised by the domestic industry and to ensure that the CVD Agreement continued to meet all of the statutory requirements for a suspension agreement, *e.g.*, that suspension of the investigation is in the public interest, including the availability of supplies of sugar in the U.S. market, and that effective monitoring is practicable. The consultations resulted in Commerce and the GOM initialing a draft amendment to the CVD Agreement on June 14, 2017, and subsequently signing a finalized amendment on June 30, 2017.⁸

CSC Sugar LLC (CSC Sugar) challenged Commerce’s determination to amend the CVD Agreement by contending that Commerce did not meet its obligation to file a complete administrative record.⁹ Specifically, CSC Sugar argued that Commerce failed to memorialize and include in the record *ex parte* communications between Commerce officials and interested parties (including the domestic sugar industry and representatives of Mexico), as required by

(September 23, 2015) (*Final Determination*).

⁶ *Final Determination*, 80 FR at 57338.

⁷ See *Sugar From Mexico*, 80 FR 70833 (November 16, 2015) (*Final ITC Determination*).

⁸ See *Sugar From Mexico: Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 82 FR 31942 (July 11, 2017) (2017 CVD Amendment).

⁹ See *CSC Sugar LLC v. United States*, Ct. No. 17-00214, Slip Op. 19-131 (CIT October 18, 2019) (*CSC Sugar II*) at 4.

section 777(a)(3) of the Act.¹⁰ The CIT agreed with CSC Sugar and ordered Commerce to supplement the administrative record with any *ex parte* communications regarding the 2017 CVD Amendment.¹¹

Ultimately, the CIT found that Commerce’s failure to follow the recordkeeping requirements of Section 777 of the Act cannot be described as “harmless.”¹² The CIT found that this recordkeeping failure substantially prejudiced CSC Sugar.¹³ On that basis, the CIT stated that the 2017 CVD Amendment must be vacated.¹⁴ Consistent with CIT’s ruling in *CSC Sugar II*, on December 6, 2019, Commerce terminated the 2017 CVD Amendment prospectively – and accordingly, as of December 7, 2019, the unamended CVD Agreement has been in force and effective, and the 2017 CVD Amendment has had no force or effect.¹⁵

On November 4, 2019, Commerce formally opened consultations to renegotiate an amendment to the CVD Agreement.¹⁶ On November 6, 2019, Commerce released a proposed amendment to the CVD Agreement and invited parties to provide written comments on the proposed amendment by November 12, 2019.¹⁷ On December 4, 2019, Commerce and the GOM initialed a draft amendment to the CVD Agreement, and Commerce released a corresponding

¹⁰ *Id.*

¹¹ *Id.* (citing *CSC Sugar LLC v. United States*, 317 F. Supp. 3d 1322, 1326 (CIT 2018)).

¹² *Id.* at 11-12.

¹³ *Id.* at 12.

¹⁴ See *Sugar From Mexico: Notice of Court Decision Regarding Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 84 FR 58136 (October 30, 2019).

¹⁵ See *Sugar From Mexico: Notice of Termination of Amendment to the Agreement Suspending the Countervailing Duty Investigation*, 84 FR 67718, 67719 (December 11, 2019).

¹⁶ See Letter to the Government of Mexico from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, “Consultations on Potential Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico” (November 4, 2019).

¹⁷ See Letter to All Interested Parties from P. Lee Smith, Deputy Assistant Secretary for Policy & Negotiations, “Release of Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico” (November 6, 2019).

draft statutory memorandum.¹⁸ Interested parties were invited to provide comments on the draft amendment and draft memorandum by December 16, 2019.

Scope of Agreement

See Section I, Product Coverage, of the CVD Agreement.

Analysis of Comments Received

We received comments on the draft amendment and draft statutory memorandum from CSC Sugar; the petitioners, American Sugar Coalition and its members;¹⁹ Imperial Sugar Company; the Government of Mexico; the Sugar Users Association; the International Sugar Trade Coalition, Inc.; and the Corn Refiners Association. In reaching a final amendment to the CVD Agreement, Commerce has taken into account all comments submitted on the record of the suspension agreement proceeding and has made changes, where warranted, to the December 4, 2019 draft CVD amendment based upon those comments.

Amendment to CVD Agreement

Commerce consulted with the GOM and domestic interested parties and has considered the comments submitted by interested parties with respect to the draft amendment to the CVD Agreement. On January 15, 2020, after consideration of the interested party comments received, Commerce and the GOM signed a finalized amendment to the CVD Agreement. The 2020 Amendment, as integrated with the CVD Agreement (the amended CVD Agreement), allows for exports of Mexican sugar to the United States in accordance with the collective terms therein.

In accordance with section 704(c) of the Act, we have determined that extraordinary

¹⁸ *See* Letter to All Interested Parties from Sally C. Gannon, Director for Bilateral Agreements, “Draft Amendment to the Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico and Draft Statutory Memorandum” (December 4, 2019).

¹⁹ Petitioners are the American Sugar Coalition and its individual members: American Sugar Cane League, American Sugar Refining, Inc., American Sugarbeet Growers Association, Florida Sugar Cane League, Rio Grande Valley Sugar Growers, Inc., Sugar Cane Growers Cooperative of Florida, and United States Beet Sugar Association.

circumstances, as defined by section 704(c)(4) of the Act, exist with respect to the amended CVD Agreement. We have also determined that the amended CVD Agreement is in the public interest and can be monitored effectively, as required under section 704(d) of the Act.

For the reasons outlined above, we find that the amended CVD Agreement meets the criteria of section 704(c) and (d) of the Act.

The terms and conditions of the amended CVD Agreement, signed on January 15, 2020, are set forth in the 2020 Amendment to the CVD Agreement, which is attached in Annex 1 to this notice.

Administrative Protective Order Access

The administrative protective order (APO) Commerce granted in the suspension agreement segment of this proceeding remains in place and effective for the amended CVD Agreement. All new parties requesting access under the APO currently in effect to business proprietary information submitted during the administration of the amended CVD Agreement must submit an APO application in accordance with Commerce's regulations currently in effect.²⁰

We are issuing and publishing this notice in accordance with section 704(f)(1)(A) of the Act and 19 CFR 351.208(g)(2).

Dated: January 15, 2020.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

²⁰ See section 777(c)(1) of the Act; 19 CFR 351.103, 351.304, 351.305, and 351.306.

ANNEX 1: AMENDMENT TO THE AGREEMENT SUSPENDING THE COUNTERVAILING DUTY INVESTIGATION ON SUGAR FROM MEXICO

The Agreement Suspending the Countervailing Duty Investigation on Sugar from Mexico (Agreement) signed by the United States Department of Commerce (Commerce) and the Government of Mexico (GOM) on December 19, 2014, is amended, as set forth below (Amendment).

If a provision of the Agreement conflicts with a provision of this Amendment, the provision of the Amendment shall supersede the provision of the Agreement to the extent of the conflict. All other provisions of the Agreement and their applicability continue with full force.

Commerce and the GOM hereby agree as follows:

Section II (“Definitions”) is amended as follows:

Section II.D is replaced with:

“Effective Date of the Agreement” means the date on which Commerce and the GOM signed the Agreement. Additionally, the “Effective Date of the Amendment” means the date on which Commerce and the GOM sign the Amendment.

Section II.G.1 is replaced with:

1. “Initial Export Limit Period” covers entries of Sugar entered, or withdrawn from warehouse for consumption, between October 1, 2019 and September 30, 2020.

Section II.K is replaced with:

“Other Sugar” means

- a. Sugar at a polarity of less than 99.2, as produced and measured on a dry basis;
- b. Where such Sugar is Additional U.S. Needs Sugar, as defined in Section II.U, Sugar at a polarity of less than 99.5, as produced and measured on a dry basis; and,
- c. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is below 99.5, as produced and measured on a dry basis.

Such Other Sugar must be exported to the United States loaded in bulk and freely flowing (*i.e.*, not in a container, tote, bag or otherwise packaged) into the hold(s) of an ocean-going vessel. To be considered as Other Sugar, if Sugar leaves the Mexican mill in a container, tote, bag or other package (*i.e.*, is not freely flowing), it must be emptied from the container, tote, bag or other package into the hold of the ocean-going vessel for exportation. All other exports of Sugar from Mexico that are not transported in bulk and freely flowing in the hold(s) of an ocean-going vessel will be considered to be Refined Sugar for purposes of the Export Limit or Additional U.S. Needs Sugar, regardless of the polarity of that Sugar.

Section II.L is replaced with:

“Refined Sugar” means

- a. Sugar at a polarity of 99.2 and above, as produced and measured on a dry basis;
- b. Sugar considered to be Refined Sugar under Section II.K;
- c. Where such Sugar is Additional U.S. Needs Sugar as defined in Section II.U, Sugar at a polarity of 99.5 and above, as produced and measured on a dry basis; and
- d. In the event that Section V.B.4.d is exercised, Sugar at a polarity specified by USDA that is 99.5 or above, as produced and measured on a dry basis.

New Section II.U is added as follows:

“Additional U.S. Needs Sugar” means the quantity of Sugar allowed to be exported, over and above the Export Limit calculated under Section V.B.3, to fill a need identified by USDA in the U.S. market for a particular type and quantity of Sugar, and offered to Mexico pursuant to Section V.B.4.c.

Section V (“Export Limits”) is amended as follows:

Section V.A is replaced with the following:

A. The Export Limit for the Initial Export Limit Period shall be 1,461,420 short tons raw value. Effective January 1, 2020, no more than 1,004,726 short tons raw value of sugar from Mexico, may be exported to the United States during the period October 1, 2019, through March 31, 2020. The restriction in Section V.C.3, as set forth below, shall apply to only an amount of 1,361,420 short tons raw value. The Export Limit for the Initial Export Limit Period shall be recalculated in March 2020 in accordance with Section V.B.3. The restriction in V.C.3 below shall apply to only the Export Limit calculated in March 2020 less 100,000 short tons raw value.

Section V.B - the first sentence of the first paragraph is amended as follows (changes in italics):

The Export Limit for each Subsequent Export Limit Period will be *fifty (50)* percent of the Target Quantity of U.S. Needs as calculated based on the July WASDE preceding the beginning of the Export Limit Period.

Section V.B.4 is replaced with the following:

4. Increases to the Export Limit

- a. Prior to April 1 of any Export Limit Period, if USDA notifies Commerce, in writing, of any additional need for Sugar, Commerce shall, consistent with 704(c) of the Act, increase the Export Limit to address potential shortages in the U.S. market based on USDA’s request.
- b. Starting in March, within 10 days following the publication of each WASDE report during a given Export Limit Period, Commerce agrees that it shall consult with

USDA and the GOM regarding any potential increase in the Export Limit on or after April 1. Following each consultation with the GOM, the GOM will notify Commerce within 10 days of (1) the extent to which the GOM has issued export licenses for Other Sugar and Refined Sugar to fulfill 100 percent of the Target Quantity of U.S. Needs; (2) the quantity of Other Sugar and Refined Sugar that has been exported under such licenses, and (3) the nature and quantity of the Sugar that Mexico can supply, with supporting documentation for the foregoing, and Commerce shall notify USDA.

- c. Pursuant to such consultations, and upon receiving notice from USDA in writing of a need in the U.S. market for a particular type and quantity of additional Sugar that Mexico has indicated it can supply, Commerce shall: (1) request written confirmation from the GOM that Mexico can and will supply 100 percent of the Target Quantity of U.S. Needs (as calculated pursuant to Section V.B.3 based on the March WASDE); and (2) upon receiving such confirmation, increase the Export Limit, consistent with 704(c) of the Act, by an amount equal to 100 percent of such particular type and quantity of sugar identified by USDA (hereinafter “Additional U.S. Needs Sugar”). When such Additional U.S. Needs Sugar is requested by USDA, and in turn offered to Mexico by Commerce, the definitions for Other Sugar and Refined Sugar in Section II.K.a and Section II.L.a, respectively, shall apply prior to May 1 of any Export Limit Period, and, on or after such date, the definition in Section II.K.b and Section II.L.c, respectively, shall apply. Such Additional U.S. Needs Sugar shall comply with the applicable definitions and requirements in the Agreement, for Other Sugar and Refined Sugar, respectively.
- d. In the event of an extraordinary and unforeseen circumstance that seriously threatens the economic viability of the U.S. sugar refining industry, USDA may specify the polarity of the amount of additional Sugar specifically needed to rectify such extraordinary and unforeseen circumstance. To the extent possible under the circumstances, USDA will consult with the GOM and other interested parties. When such additional Sugar is requested by USDA under this Section V.B.4.d, and in turn offered to Mexico by Commerce, the definitions for Other Sugar and Refined Sugar in Section II.K.c and Section II.L.d, respectively, shall apply.
- e. If Commerce has imposed penalties for polarity non-compliance under Section VIII.B.4 in a given Export Limit Period, Mexico may not be eligible for Additional Needs U.S. Sugar.
- f. Any additional Sugar may be limited to Other Sugar or Refined Sugar, or any combination thereof, as specified by USDA. For greater certainty, Section V.C does not apply to any additional Sugar exported by Mexico pursuant to this Section V.B.4.

Section V.C is amended as follows:

Section V.C.2 is amended as follows (*changes in italics*):

No more than 55 percent of U.S. Needs calculated in each *September* and effective January 1

may be exported to the United States during the period October 1 through March 31, *unless that amount is less than or equal to the amount calculated under Section V.C.1, in which case the amount calculated under Section V.C.1 will continue to apply until March 31.*

Section V.C.3 is amended as follows (changes in italics):

Refined Sugar may account for no more than 30 percent of the exports during any given Export Limit Period.

Section VI (“Implementation”) is amended as follows:

Section VI.A - the following sentences are added at the end of the paragraph:

On the Effective Date of the Amendment, presentation of an Export License is required as a condition for entry of Sugar from Mexico into the United States. The GOM will issue amended regulations to implement the Amendment, as necessary.

Section VI.B – the first sentence is amended as follows (changes in italics) and a new sentence is inserted after the first sentence (in italics):

Export Licenses will be *contract-specific* and must contain the information identified in Appendix I. *Export Licenses issued by the GOM must, in addition to specifying whether or not exported Other Sugar is for further-processing, also specify the identity of the entity that is further processing the Other Sugar, if known.*

Section VIII.B (“Compliance Monitoring”) is amended as follows:

Section VIII.B.4 is added as follows:

4. Penalties for Polarity Non-Compliance of this Agreement and/or Price Non-Compliance of the Agreement Suspending the Antidumping Duty Investigation on Sugar from Mexico (AD Agreement): Commerce will review documentation regarding polarity testing that is placed on the record of this Agreement, in accordance with Section VII.C.6 of the AD Agreement, to determine whether there have been imports that are inconsistent with the provisions of this Agreement and Sections II.F, II.H, VII.C.6 and Appendix I of the AD Agreement. Where Commerce finds that polarity test results of an entry of Sugar are not compliant with the Agreement’s or AD Agreement’s applicable definition of Other Sugar or Sugar was sold at prices that are less than the Reference Prices established in Appendix I of the AD Agreement: (1) Commerce shall deduct two (2) times the quantity of that entry from Mexico’s Export Limit, and (2) the GOM will, in turn, deduct that same quantity from the specific producer’s/exporter’s Export Limit allocation.

- a. The penalty will be applied on the date Commerce notifies the GOM in writing of such non-compliance.

- b. If Other Sugar that enters during the period from October 1 through the day before the publication of the July WASDE tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then Commerce will reduce Mexico's current Export Limit by two (2) times the quantity of that entry. The Export Limit determined under Section V.B.2 and V.B.3 will be correspondingly reduced by the same amount. At the time of the March WASDE when the Target Quantity of U.S. Needs is determined, and up to the day before the publication of the July WASDE, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's *current-year* Export Limit was reduced.
- c. If Other Sugar that enters during the period from the day of the publication of the July WASDE through September 30 tests at or above 99.2 polarity (or at or above 99.5 or other polarity in the case of Additional U.S. Needs Sugar), then Commerce will reduce the Export Limit for the next Export Limit Period by two (2) times the quantity of that entry. That reduction will be applied to each revision of the Export Limit under Section V.B.1, V.B.2 and V.B.3. If Mexico's *next fiscal year* Export Limit is reduced, USDA may exercise its authority to seek to fill from other countries the particular type and quantity of sugar needed in the U.S. market to address the penalty amount by which Mexico's Export Limit was reduced.
- d. If Commerce finds that issues with meeting the polarity, testing, or compliance requirements of this Agreement continue to arise, Commerce can at any time terminate the Agreement under Section XI.B. Apart from termination, Commerce may take additional steps to ensure compliance with the terms of this Agreement and the AD Agreement as appropriate, including reducing the Export Limit up to three (3) times the quantity of entries that do not comply with this Agreement or the AD Agreement.

Appendix I is amended as follows (changes in italics):

The GOM will issue *contract-specific* Export Licenses to Mexican entities that shall contain the following fields:

At Appendix I, the following will be added to the Export License:

- 12. Contract Identification Information: Indicate the contract identification information with which the license is associated.

At Appendix II, the following will be added to the information reported to Commerce:

- 12. Contract Identification Information: Indicate the contract identification information with which the license is associated.
- 13. Date of Export: Indicate the date of export of the Sugar from Mexico to the United States.

It is acknowledged that reported information may need to be updated from time to time to reflect corrected information from customs authorities.

For the U.S. Department of Commerce:

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance
U.S. Department of Commerce

Date

For the Government of Mexico:

Luz María de la Mora Sánchez
Subsecretaria de Comercio Exterior
Secretaría de Economía

Date

[FR Doc. 2020-00972 Filed: 1/21/2020 8:45 am; Publication Date: 1/22/2020]